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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/715,254	11/17/2003	Jon F. Jensen	JENJO122024	5000

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SEATTLE, WA 98101-2347

EXAMINER

NGUYEN, SON T

ART UNIT	PAPER NUMBER
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3643

DATE MAILED: 10/07/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

24

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/715,254	JENSEN, JON F.	
	<b>Examiner</b>	<b>Art Unit</b>	
	Son T. Nguyen	3643	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**  
**Period for Reply**

**A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.**

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 19 July 2004.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) 17-20 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-16 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 17 November 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
     Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
     Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)             | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)    | Paper No(s)/Mail Date. _____  |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____   | 6) <input type="checkbox"/> Other: _____                                    |

### **DETAILED ACTION**

1. Newly submitted claims 17-20 are directed to an invention that is independent or distinct from the invention originally claimed for the following reasons: the claims are method claims and are restrictable under product and process of using. In the restriction, the product as claimed can be used in a materially different process of using that product. For example, the stackable planter as claimed in the product claim can be used for shipment of other elements (any elements can be shipped since the plante4r is just a tray with a plurality of cups) besides plants (note the functional language of "for holding soil") and the stacking for saving space, thus, the product can be used in a materially different process.

Since applicant has received an action on the merits for the originally presented invention, this invention has been constructively elected by original presentation for prosecution on the merits. Accordingly, claims 17-20 have been withdrawn from consideration as being directed to a non-elected invention. See 37 CFR 1.142(b) and MPEP § 821.03.

A telephone call was made to David McKenzie around 9/21/04 for a restriction requirement. However, that requirement is withdrawn due to the comment regarding originally presented invention because the newly submitted claims 17-20 are considered to be distinct from the invention originally claimed.

### ***Claim Rejections - 35 USC § 102***

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

3. **Claims 1,4-7** are rejected under 35 U.S.C. 102(e) as being anticipated by US 6612073 (herein 073).

For claim 1, 073 teaches a stackable planter comprising a plurality of planter trays 64, each tray having at least one cup 70 at a periphery; an annular inner rib 66,68 defining a center portion of the at least one tray, the center portion having an aperture 76,52,54 (fig. 3 shows in the area of refs. 52,54, there are holes in the center); and an annular inner rib 66,68 (same as the other planter since they are similar as shown) defining a center portion of another planter tray having a bottom wall 56 that extends across the center portion and defines a recess, whereby one or more plants can be placed in the center of the planter.

For claim 4, 073 teaches wherein a planter tray of the plurality of planter trays is configured to nest within a second planter tray while in a collapsed condition (as shown in fig. 5).

For claim 5, 073 teaches wherein the planter cup is configured with an outer profile selected from the group consisting of round, oval, and polygon.

For claim 6, 073 teaches wherein a base 56 of at least one planter tray is configured to removably engage an upper portion of a second planter tray (at refs. 60,76).

For claim 7, 073 teaches an engagement mechanism 60,76 configured to secure the plurality of planter trays in a terraced configuration.

***Claim Rejections - 35 USC § 103***

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. **Claims 1-7** are rejected under 35 U.S.C. 103(a) as being unpatentable over US 6684565 (herein 565) in view of 073 (as above).

For claim 1, 565 teaches a stackable planter comprising a plurality of planter trays 142; an annular inner rib 146 defining a center portion of the at least one tray, the center portion having an aperture (fig. 14, the center of ref. 146 has a hole); and an annular inner rib 145 defining a center portion of another planter tray having a bottom wall that extends across the center portion and defines a recess (fig. 14, self explanatory), whereby one or more plants can be placed in the center of the planter. However, 565 is silent about each tray having at least one cup at a periphery.

As explained above, 073 teaches a stackable planter comprising a plurality of planter trays 64, each tray having at least one cup 70 at a periphery. It would have been obvious to one having ordinary skill in the art at the time the invention was made to employ cups as taught by 073 at the periphery of the tray of 565 in order to create a more aesthetically pleasing terrace-like planter assembly.

For claim 2, 565 as modified by 073 teaches wherein the inner rib is sized to separate the at least one planter cup from the aperture of the center portion.

For claim 3, 565 as modified by 073 teaches wherein the inner rib is configured to retain soil within the at least one planter cup separate from the center portion.

For claim 4, as mentioned above, 073 teaches wherein a planter tray of the plurality of planter trays is configured to nest within a second planter tray while in a collapsed condition (as shown in fig. 5). Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to nest as taught by 073 the planter trays of 565 as modified by 073 in order to save space for storage.

For claim 5, as mentioned above, 073 teaches wherein the planter cup is configured with an outer profile selected from the group consisting of round, oval, and polygon. It would have been obvious to one having ordinary skill in the art at the time the invention was made to employ various outer profile for the cups as taught by 073 in the planter assembly of 565 as modified by 073 in order to create a more aesthetically pleasing terrace-like planter assembly.

For claims 6 & 7, 565 as modified by 073 (emphasis on 565) teaches wherein a base of at least one planter tray is configured to removably engage an upper portion of a second planter tray (by refs. 143,144, engagement mechanism, see fig. 14).

6. **Claim 8** is rejected under 35 U.S.C. 103(a) as being unpatentable over 073 (as above) in view of US 4614056 (herein 056). 056 teaches a stackable planter assembly comprising planter trays 1 that is configured to suspend from a support. It would have been obvious to one having ordinary skill in the art at the time the invention was made

to configure the planter assembly of 073 to suspend from a support as taught by 056 in order to allow a user to hang the assembly.

7. **Claims 9-11** are rejected under 35 U.S.C. 103(a) as being unpatentable over 073 (as above) in view of US 6092333 (herein 333). 333 teaches planter assembly comprising a cart 3 configured to support the plurality of planter trays 1, wherein the cart further comprises a rim 35 and a plurality of wheels 7 attached to the cart. It would have been obvious to one having ordinary skill in the art at the time the invention was made to employ a cart 3 configured to support the plurality of planter trays 1, wherein the cart further comprises a rim 35 and a plurality of wheels 7 attached to the cart as taught by 333 in the planter assembly of 073 in order to allow a user to move the planter assembly around to another location as desired.

8. **Claim 12** is rejected under 35 U.S.C. 103(a) as being unpatentable over 073 as modified by 333 as applied to claims 1,9 above, and further in view of US 3686791 (herein 791). 791 teaches a planter assembly comprising a plurality of stakes X. It would have been obvious to one having ordinary skill in the art at the time the invention was made to employ a plurality of stakes as taught by 791 in the planter assembly of 073 as modified by 333 in order to hold or further secure the assembly in the ground. In addition, it would have been obvious to one having ordinary skill in the art at the time the invention was made to attach the stakes of 073 as modified by 333 & 791 to the cart (as taught by 333) in order to keep the cart stationary.

9. **Claim 13-16** are rejected under 35 U.S.C. 103(a) as being unpatentable over 073 (as above) in view of US 5440836 (herein 836).

For claims 13-15, 836 teaches a planter assembly comprising a watering tank (the smaller top container as shown in fig. 3) configured to fit within the center portion of a planter tray 90 wherein the watering tank comprises a port (see arrow where water comes out to the next planter) configured to distribute water to the planter trays, wherein the watering tank further comprises an opening (where pipe 102 comes in) configured to receive water and a plug (the plug around the pipe 102 opening coming into the tank) configured to measure nutrients. It would have been obvious to one having ordinary skill in the art at the time the invention was made to employ a watering tank (the smaller top container as shown in fig. 3) configured to fit within the center portion of a planter tray 90 wherein the watering tank comprises a port (see arrow where water comes out to the next planter) configured to distribute water to the planter trays, wherein the watering tank further comprises an opening (where pipe 102 comes in) configured to receive water and a plug (the plug around the pipe 102 opening coming into the tank) configured to measure nutrients as taught by 836 in the planter assembly of 073 in order to provide water/nutrient to the plants grown in the planter trays below.

For claim 16, in addition to the above, 836 teaches the watering tank further comprises an extension 102 configured to fit downward through the center portion of at least one planter tray 90 stacked below the watering tank. It would have been obvious to one having ordinary skill in the art at the time the invention was made to have the watering tank further comprises an extension 102 configured to fit downward through the center portion of at least one planter tray 90 stacked below the watering tank as



further taught by 836 in the planter assembly of 073 as modified by 836 in order to replenish the tank with water/nutrient pumping from the pump 104 (of 836).

***Response to Arguments***

10. Applicant's arguments with respect to claim 1 have been considered but are moot in view of the new ground(s) of rejection.

***Conclusion***

11. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

12. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Son T. Nguyen whose telephone number is (703) 305-0765. The examiner can normally be reached on Monday - Friday from 9:00 a.m. to 5:00 p.m. If attempts to reach the examiner by telephone are unsuccessful, the

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examiner's supervisor, Peter Poon, can be reached at (703) 308-2574. Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to Customer Service at (703) 872-9325. The official fax number is 703-872-9306.

A handwritten signature in black ink, appearing to read 'Son T. Nguyen', with a stylized flourish at the end.

Son T. Nguyen  
Primary Examiner, GAU 3643  
October 1, 2004